

ARNOLD & PORTER LLP
399 Park Avenue
New York, New York 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399
Charles G. Berry

-and-

555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Charles A. Malloy

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Lehman Brothers Holdings Inc., *et al.*,

Debtors.

Chapter 11

Case No. 08-13555 (SCC)
(Jointly Administered)

**OBJECTION OF WESTPAC BANKING CORPORATION TO DEBTORS'
MOTION TO ALLOW DISCLOSURE OF THE DERIVATIVE QUESTIONNAIRES
PURSUANT TO SECTION 107(a) OF THE BANKRUPTCY CODE**

Westpac Banking Corporation ("Westpac"), a creditor in these chapter 11 cases, objects to the Debtors' Motion to Allow Disclosure of the Derivative Questionnaires Pursuant to Section 107(a) of the Bankruptcy Code (Docket No. 48939) (the "Motion").¹

The Bar Date Order required all creditors to submit proof of claim forms to the Debtors' noticing and claims agent or the Clerk of this Court by mail or hand-delivery. Bar Date Order at 2-3. As contemplated by section 107(a) of the Bankruptcy Code, these claims are publicly

¹ Capitalized terms used in this Objection shall have the meaning ascribed to them in the Motion, unless otherwise defined herein.

available on the noticing and claims agent's website at <http://dm.epiq11.com/LBH/Claim>.

Westpac filed proofs of claim in accordance with the Bar Date Order.

The Bar Date Order also provided for the Debtors to establish an independent, secure website (the "Questionnaire Website") to be used by creditors holding claims based on derivative contracts or guarantees to submit the information required by the Questionnaire Website and the Bar Date Order (the "Derivative and Guarantee Claim Information"). The Bar Date Order did not require creditors to file Derivative and Guarantee Claim Information with the claims agent or the Clerk of the Court.

The Questionnaire Website is separate from the claims agent's website, and the Bar Date Order expressly protects against public disclosure by providing that "information submitted on the website <http://www.lehman-claims.com> in respect of Derivative Contracts and Guarantees will not be accessible on the website other than by the party that submitted such information, the Debtors, the Creditors' Committee and their respective advisors and counsel ..." Bar Date Order at 9. Accordingly, section 107(a) of the Bankruptcy Code is not applicable to the information uploaded to the Questionnaire Website because that information does not constitute a "paper filed *in* a case under this title and the dockets of the bankruptcy court." 11 U.S.C. § 107(a) (emphasis added).

Westpac uploaded materials to the Questionnaire Website consisting of confidential commercial information regarding the calculation of its claims under derivative contracts with the Debtors. Among other things, this information contains sources and methods used by Westpac in calculating derivative transaction close-out amounts. This is information that otherwise would be subject to protection as "confidential ... commercial information" under section 107(b)(1) of the Bankruptcy Code. Westpac submitted these materials to the

Questionnaire Website in reliance upon the Bar Date Order's assurance that such information would be protected from public disclosure. Westpac objects to the Debtors' request to abrogate the Bar Date Order's protection of confidential commercial information.

The relief requested in the Motion should be modified to provide that the Debtors may produce or disclose the Derivatives Questionnaires as discovery materials in Lehman-related adversary proceedings or claim objections only if the Debtors and the party receiving such production or disclosure expressly stipulate that the Derivatives Questionnaires shall remain confidential and be used only for the purpose of litigating the adversary proceeding or claim objection in which they are produced. Absent such protections for the Derivatives and Guarantee Claim Information, the Motion should be denied.

Dated: New York, New York
March 27, 2015

Respectfully submitted,

ARNOLD & PORTER LLP

By: /s/ Charles G. Berry
Charles G. Berry
399 Park Avenue
New York, New York 10022-4690
(212) 715-1000 (Telephone)
(212) 715-1399 (Facsimile)

-and-

Charles A. Malloy
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
(202) 942-5000 (Telephone)
(202) 942-5999 (Facsimile)